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| 09/876,921      | 06/06/2001  | Daniel R. Gaur       | 042390.P11387       | 1116             |

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EXAMINER

BOUTAH, ALINA A

ART UNIT

PAPER NUMBER

2143

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/876,921

**Applicant(s)**

GAUR, DANIEL R.

**Examiner**

Alina N Boutah

**Art Unit**

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 29-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Response to Amendment***

This action is in response to Applicant's amendment filed August 23, 2005. Claims 1-28 have been cancelled. Claims 29-32 have been newly added and are pending in the application.

The indicated allowability of claim 7, 8, 19 and 20 is withdrawn. Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 29 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 29 and 30 recites the limitation "the receive performance" in the first line of the claims. There are insufficient antecedent basis for these limitations in the claims.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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Claims 31 and 32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims directed to a machine-readable medium that provides instructions, which appears to be nothing more than a signal carrying instructions for execution not tangibly embodied in a manner so as to be executable and is thus non-statutory for failing to be in one of the categories of invention.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,613,129 issued to Walsh in view of USPN 6,735,629 issued to Cafarelli, III et al. (hereinafter referred to as Cafarelli).

(New) Regarding claim 29, Walsh teaches a method of improving the receive performance of a network adapter, the method comprising:

monitoring an incoming traffic load (abstract; col. 2, lines 62 - col. 3, line 5); and

dynamically tuning an interrupt delay in response to the incoming traffic load, wherein dynamically tuning the interrupt delay includes increasing the interrupt delay in response to an

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increase in the incoming network traffic load, and decreasing the interrupt delay in response to a decrease in the incoming network traffic load (abstract; col. 2, lines 10-27; col. 3, lines 21-30, lines 49-64).

Although Walsh does not explicitly disclose increasing the interrupt delay corresponds to an increase of from 3 milliseconds to 5 milliseconds, he teaches a postponement value with the potentially greater variance is used to rapidly respond to abrupt change in network load (abstract). One of ordinary skill in the art would have recognized that the range of 3-5 milliseconds is an obvious variation that can be defined by an administrator at his or her discretion.

Walsh fails to explicitly teach the traffic load being a network traffic load. Cafarelli teaches monitoring an incoming network traffic load (abstract). At the time the invention was made, one of ordinary skill in the art would have been motivated to monitor an incoming traffic load and turning an interrupt delay according to the load in order to dynamically optimizing the CPU cycles for analyzing data retrieved from the network in a manner for eliminating system freeze under high network load (col. 1, lines 24-26), thus maximizing the network's efficiency.

(New) Regarding claim 30, Walsh teaches a method of improving the receive performance of a network adapter, the method comprising:

monitoring an incoming traffic load (abstract; col. 2, lines 62 - col. 3, line 5); and

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dynamically tuning an interrupt delay in response to the incoming traffic load, wherein dynamically tuning the interrupt delay includes increasing the interrupt delay in response to an increase in the incoming network traffic load, and decreasing the interrupt delay in response to a decrease in the incoming network traffic load (abstract; col. 2, lines 10-27; col. 3, lines 21-30, lines 49-64).

Although Walsh does not explicitly disclose increasing the interrupt delay corresponds to an increase of from 1 milliseconds to 3 milliseconds, he teaches a postponement value with the potentially greater variance is used to rapidly respond to abrupt change in network load (abstract). One of ordinary skill in the art would have recognized that the range of 1-3 milliseconds is an obvious variation that can be defined by an administrator at his or her discretion.

Walsh fails to explicitly teach the traffic load being a network traffic load. Cafarelli teaches monitoring an incoming network traffic load (abstract). At the time the invention was made, one of ordinary skill in the art would have been motivated to monitor an incoming traffic load and turning an interrupt delay according to the load in order to dynamically optimizing the CPU cycles for analyzing data retrieved from the network in a manner for eliminating system freeze under high network load (col. 1, lines 24-26), thus maximizing the network's efficiency.

Claims 31 and 32 are similar to claims 28 and 29, respectively, therefore are rejected under the same rationale.

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***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alina N. Boutah whose telephone number is 571-272-3908. The examiner can normally be reached on Monday-Friday (9:00 am - 5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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WILLIAM C. VAUGHN, JR.  
PRIMARY EXAMINER